



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 3, 1996

Ms. Christine Rodriguez  
Staff Attorney  
Legal and Compliance, MC110-1A  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR96-0653

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 30754.

The Texas Department of Insurance (the "department") received a request for information concerning the insurance coverage of newborn children. You say some information will be released to the requestor, but assert that the department may withhold portions of the requested information from required public disclosure based on sections 552.101, 552.103, and 552.111 of the Government Code. You enclosed representative samples of the requested information.

Section 552.101 excepts from required public disclosure information that is confidential by law. You raise this exception in connection with the common-law right to privacy. Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

You contend that the common-law right to privacy protects from disclosure certain medical information. While common-law privacy may protect an individual's medical history, it does not protect all medically related information. *See Open Records*

Decision No. 478 (1987). Individual determinations are required. *See* Open Records Decision No. 370 (1983). This office has determined that common-law privacy protects the following information: the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987); the results of mandatory urine testing, *id.*; illnesses, operations, and physical handicaps of applicants, *id.*; the fact that a person attempted suicide, Open Records Decision No. 422 (1984); the names of parents of victims of sudden infant death syndrome, Attorney General Opinion JM-81 (1983); and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We do not believe that any of the medical information you provided this office is highly intimate or embarrassing information. However, the records contain some private financial information. *See* Open Records Decision No. 600 (1992). Accordingly, pursuant to section 552.101 in conjunction with the common-law right to privacy, the department must withhold all information that appears in the file labeled "Medical Record-Confidential" that identifies an insured or a patient, including the name, address, and telephone number. In addition, the documents contain some information that is protected from required public disclosure pursuant to section 552.101 in conjunction with section 5.08(b) of the Medical Practice Act, V.T.C.S. art. 4495b. *See id.* at 7. We have marked the documents accordingly.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991).

You assert that the requested information relates to three lawsuits the department has brought or will bring against three parties: American Chambers Life Insurance Company ("American Chambers"), Provident American Life Insurance Company ("Provident"), and Blue Cross/Blue Shield of Texas ("BCBS"). As for the litigation involving American Chambers and Provident, you inform us that the department

is investigating these companies for alleged violations of insurance laws. You say that it is reasonably anticipated that these investigations will culminate in administrative contested cases.

We agree that litigation is reasonably anticipated in these cases. We note, however, that the opposing party has seen several of the records. When the opposing party has seen or had access to any of the information, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We have marked the portions of the information that relate to the anticipated litigation involving American Chambers and Provident and that the department may withhold pursuant to section 552.103 of the Government Code.

As for BCBS, you inform us that the case was settled. The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). Therefore, the department may not withhold information that relates to the BCBS case based on section 552.103 of the Government Code.

Finally, you raise section 552.111. However you did not do so until December 14, 1995, when you enclosed the representative samples of the requested information. You inform us that the department received the request for information on November 28, 1994. Section 552.301(a) of the Government Code provides that:

A governmental body that receives a written request for information that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions. *The governmental body must ask for the attorney general's decision within a reasonable time but not later than the 10th calendar day after the date of receiving the written request.* [Emphasis added.]

Since the department received the request on November 28, 1994, and raised section 552.111 on December 14, 1995, the department failed to raise section 552.111 within the ten-day period mandated by section 552.301(a). Because the department did not assert section 552.111 within the deadline provided by section 552.301(a), the information for which you raise this exception is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ).

In order to overcome the presumption that the information is public information, the department must provide compelling reasons why the information should be withheld from required public disclosure. The fact that the information may be excepted under section 552.111 is not alone a compelling reason for withholding the information. *See* Open Records Decision No. 515 (1988). The department has provided no other reason that the information should not be released. Consequently, the department may not withhold the requested information pursuant to section 552.111 of the Government Code.<sup>1</sup>

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo  
Assistant Attorney General  
Open Records Division

KHG/rho

Ref.: ID# 30754

Enclosures: Marked documents

cc: Mr. Phil Patman  
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<sup>1</sup>In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.